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Attorneys for Plaintiff

[Additional counsel appear on signature page.]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

WEST PALM BEACH FIRE PENSION FUND,

Plaintiff,

vs.

LAWRENCE "LARRY" PAGE, SERGEY M.
BRIN, ERIC E. SCHMIDT, L. JOHN DOERR,
DIANE B. GREENE, JOHN L. HENNESSY,
ANN MATHER, PAUL S. OTELLINI, K. RAM
SHRIRAM, SHIRLEY M. TILGHMAN,
MICHAEL J. MORITZ, ARTHUR D.
LEVINSON, ROBERT ALAN EUSTACE,
OMID R. KORDESTANI, JONATHAN J.
ROSENBERG, SHONA L. BROWN, and
ARNNON GESHURI,

Defendants,

and

GOOGLE LLC,

Nominal Defendant.

CASE NO.: 4:15-cv-01334-YGR

**STIPULATION AND [PROPOSED]
ORDER VOLUNTARILY
DISMISSING ACTION WITHOUT
PREJUDICE AND WITHOUT
NOTICE**

Date: N/A

Time: N/A

Hon. Yvonne Gonzalez Rogers

1 WHEREAS, on March 23, 2015, Plaintiff West Palm Beach Fire Pension Fund
2 (“Plaintiff”) filed its Verified Shareholder Derivative Complaint against Defendants¹;

3 WHEREAS, on February 28, 2014, a shareholder derivative action asserting state law
4 claims arising from facts common to this action was filed against all but one of the Defendants in
5 Santa Clara County Superior Court, followed by two additional purported shareholder derivative
6 actions that were filed on March 6, 2014 and April 29, 2014;

7 WHEREAS, on May 27, 2014, these three purported shareholder actions were
8 consolidated under the caption, *In re Google Inc. Shareholder Derivative Litigation*, Lead Case
9 No. 1-14-CV-261485 (the “State Court Action”);

10 WHEREAS, there is substantial overlap between the allegations, facts, defenses, and
11 parties in the instant action and the State Court Action, and the resolution of the statute of
12 limitations issue in the State Court Action directly impacted Plaintiff’s state law claims in this
13 action;

14 WHEREAS, on June 22, 2015, Plaintiff and Defendants entered into a stipulation which
15 stayed the instant action pending resolution of the State Court Action in order to promote
16 efficiency for the Parties and the Court and to avoid the risk of inconsistent rulings on the statute
17 of limitations issue on Plaintiff’s state law claims;

18 WHEREAS, pursuant to the Parties’ stipulation, this action was stayed on June 26, 2015,
19 subject to the Parties submitting periodic joint status reports;

20 WHEREAS, on November 24, 2015, the Defendants’ motion for summary judgment was
21 granted in the State Court Action, with the state court ruling that the state law claims were barred
22 by the applicable statute of limitations under Delaware law;

23 WHEREAS, on December 9, 2015, judgment was entered in the State Court Action;

24
25 ¹ Defendants in this action are: Larry Page, Sergey M. Brin, Eric E. Schmidt, L. John
26 Doerr, Diane B. Greene, John L. Hennessy, Ann Mather, Paul S. Otellini, K. Ram Shriram,
27 Shirley M. Tilghman, Michael J. Moritz, Arthur D. Levinson, Robert Alan Eustace, Omid R.
Kordestani, Jonathan J. Rosenberg, Shona L. Brown, Arnon Geshuri, and nominal defendant
Google LLC. On February 9, 2018, defendants filed a Suggestion of Death of defendant Paul S.
Otellini, who passed away during the pendency of this action. ECF No. 64.

WHEREAS, on January 14, 2016, the plaintiffs in the State Court Action filed a notice of appeal of the final judgment entered in the State Court Action;

WHEREAS, on April 16, 2018, the Sixth District Court of Appeal of California (the “Court of Appeal”) affirmed the trial court judgment. *See Police Ret. Sys. of St. Louis v. Page*, 22 Cal. App. 5th 336 6th Dist. (2018);

WHEREAS, on May 29, 2018, the plaintiffs in the State Court Action filed a petition seeking review of the Court of Appeal’s decision in the Supreme Court of California;

WHEREAS, on August 8, 2018, the petition for review was denied by the Supreme Court of California;

WHEREAS, in light of the finality of the judgment in the State Court Action, Plaintiff here has chosen to dismiss this action without prejudice;

WHEREAS, Fed. R. Civ. P. 23.1(c) provides in relevant part, “[a] derivative action may be settled, voluntarily dismissed, or compromised only with the court’s approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.”;

WHEREAS, the Parties understand that the purpose of requiring court approval and ordering notice are to protect against the risk of collusive settlements and dismissals by “fainthearted” plaintiffs that either may not be in the best interests of the corporation or may otherwise prejudice the corporation. *See Papilsky v. Berndt*, 466 F.2d 251, 258 (2d Cir. 1972);

WHEREAS, Plaintiff has not reached a settlement with Defendants in this Action, and no payment has been made to any party or their counsel in connection with the dismissal;

WHEREAS, Plaintiff seeks a dismissal *without* prejudice, such that the dismissal would not have a preclusive effect on other actions;

WHEREAS, in light of the foregoing, the Parties respectfully submit that given the particular posture of this Action, the dismissal here does not require notice to stockholders because the concerns embodied in Rule 23.1 are not present;

1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by Plaintiff and
2 Defendants, through their undersigned counsel of record and subject to Court approval, as
3 follows:

4 1. This Action is dismissed in its entirety without prejudice and without notice,
5 pursuant to Fed. R. Civ. P. 23.1 and Fed. R. Civ. P. 41(a)(2);

6 2. Each party shall bear its own fees and costs incurred in this Action.

7 **IT IS SO STIPULATED.**

8 Dated: September 6, 2018

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9
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14 JUDITH S. SCOLNICK

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18 *Attorneys for Plaintiff West Palm Beach Fire*
19 *Pension Fund*

20 Dated: September 6, 2018

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Professional Corporation

22 s/ Benjamin M. Crosson

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26 *Attorneys for Defendants Larry Page, Sergey M.*
27 *Brin, Eric E. Schmidt, L. John Doerr, Diane B.*
Greene, John L. Hennessy, Ann Mather, Paul S.

*Otellini, K. Ram Shriram, Shirley M. Tilghman,
Michael J. Moritz, Arthur D. Levinson, Robert Alan
Eustace, Omid R. Kordestani, Jonathan J.
Rosenberg, Shona L. Brown, Arnnon Geshuri, and
Nominal Defendant Google LLC*

I, JOHN T. JASNOCH, am the ECF user whose ID and password are being used to file
this STIPULATION AND [PROPOSED] ORDER VOLUNTARILY DISMISSING ACTION
WITHOUT PREJUDICE AND WITHOUT NOTICE. In compliance with Civil Local Rule 5-
1(i)(3), I hereby attest that Benjamin M. Crosson has concurred in this filing.

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2018, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF's system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and I hereby certify that I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

s/ John T. Jasnoch
JOHN T. JASNOCH